IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

WEDNESDAY, THE 13TH JUNE 2007 / 23RD JYAISHTA 1929

MACA.No. 69 of 2003

OPMV.1558/1996 of MOTOR ACCIDENT CLAIMS TRIBUNAL, ERNAKULAM
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APPELLANT/PETITIONER:

SINGI K.S., S/O.SREENIVASAN,
KORASSERY HOUSE, THOPPUMPADY,
KOCHI - 5, ERNAKULAM DISTRICT.

BY ADV. SRI.A.P.SUBHASH

RESPONDENTS/RESPONDENTS & ADDL. 4TH RESPONDENT:

1. SHALO ANTONY, S/O.ANTONY,
THAIPPARAMBIL HOUSE,
RAMESWARAM VILLAGE, KOCHI.

2. VIKRAMAN PILLAI, MANATHARA VEEDU,
VARAVILA P.O., KARUNAGAPPALLY,
QUILON DISTRICT.

3. MANAGER, NATIONAL INSURANCE CO.LTD.,
P.B.NO.157, QUILON DIST.

4. THE ORIENTAL INSURANCE CO.LTD.,
TRIPUNITHURA.

BY ADV. SRI.P.V.JYOTHI PRASAD
SRI.RAJAN P.KALIYATH

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 13/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.Koshy & K.P.Balachandran, JJ.

M.A.C.A.No. 69 of 2003

JUDGMENT

Balachandran, J.

The appellant, a twenty one year old youngster, filed an application before the Motor Accidents Claims Tribunal, Ernakulam as O.P.(MV)No.1558/96, claiming compensation for the injuries suffered by him on account of a motor accident. He was the rider of Motor Cycle bearing Reg.No.AP-7/A 5464. His case is that while he was riding the motor cycle from west to east, along the Thevara Bridge, Motor Cycle hearing Reg.No.KL-2/A 5539 ridden by the first respondent, owned by the second respondent and insured by the third respondent Insurance Company, hit against his motor cycle and thereby he fell down and sustained serious injuries. Respondents 1 and 2 remained absent and ex parte.

2. The third respondent Insurance Company, who admitted existence of a valid insurance policy in relation to Motor Cycle bearing Reg.No.KL-2/A 5539, contended that there was no collision of the motor cycle ridden by the first respondent against the motor cycle ridden by the petitioner; that the petitioner had a fall from his motor cycle on account of his own negligence without the involvement of any other vehicle and that, therefore, they are not bound to pay any compensation to the appellant/claimant. The contention was so raised by the third respondent Insurance Company, relying on Exhibit A6 Wound Certificate-cum-Discharge Certificate issued from the Medical Trust Hospital, Ernakulam, which showed as against Column No.6, the alleged cause of injury as being

The contention of the third respondent is that the claimant is colluding with respondents 1 and 2,

with a view to claim compensation.

3. It is seen from the entries as against Column No.5 in Exhibit A6 that the injured was brought over to the hospital by Naval Aruja of Sunshine House, Thoppumpady. He was examined as PW2. He has given evidence that the Naval Aruja, whose name is seen in Exhibit A6 is himself; that it was he who took the appellant/claimant to the Medical Trust Hospital and that the appellant was then unconscious. He has also stated that the doctor did not ask him anything and he also did not talk to the doctor. Obviously, therefore, the cause of injury was being elicited by the doctor from the injured appellant himself, whose condition, as recorded as against Column No.7 in Exhibit A6, is that though conscious, he was irritable with disoriented speech. It has also to be noted that the cause of injury, as stated by the appellant, that he fell down from the motor cycle is true, though the reason for such a fall had not been

disclosed. Obviously, the injured was then not in a position to give all those details.

4. PW2 has stated that the motor cycle ridden by the appellant was going in front; that another bike was behind that and that the motor cycle ridden by him was still behind. According to him, when he reached almost in the middle of the Bridge, he heard a sound and then he could see the appellant lying down on the road. According to him, he could not see the occurrence, as he was much behind. PW4, who was the pillion rider along with the appellant/injured, has given evidence as regards collision of their motor cycle with Motor Cycle bearing Reg.No.KL-2/A 5539 ridden by the first respondent.

5. The FIR in the case, marked as Exhibit A1, was being registered on the basis of the intimation given by the doctor from the Medical Trust Hospital. Pursuant to the registration of Exhibit A1 FIR, the police conducted due investigation in

the case and has finally charge sheeted the first respondent for offence under Sections 279 and 338 IPC. Exhibit A4 vehicle inspection report in relation to motor cycle ridden by the appellant and Exhibit A5 vehicle inspection report in relation to the motor cycle ridden by the first respondent, obtained by the Investigating Agency in the course of investigation, show that both the vehicles suffered excessive damage on account of the collision. The vehicles were being inspected in the premises of Thoppumpady Police Station on 13.12.1995 in connection with Exhibit A1 crime. There is no reason to disbelieve the case of the appellant, in view of Exhibits A4 and A5 vehicle inspection reports, that injury was caused to him in the accident that occurred on account of the collision of the motor cycle ridden by the first respondent against the motor cycle ridden by him. The finding of the Tribunal that there was no collision or involvement of vehicle ridden by the

first respondent with the motor cycle ridden by the appellant, so as to give rise to a claim as against respondents 1 to 3 cannot be sustained in the circumstances. We, therefore, set aside the said finding and remit the case back to the Tribunal to consider the question of negligence and the question as to whether the appellant is entitled to get compensation and if so, what is the quantum and from which all respondents. Parties are directed to appear before the Tribunal on 9.8.2007.

This appeal is disposed of as above.

(J.B.Koshy, Judge)

13th June, 2007

(K.P.Balachandran, Judge)

tkv

J.B.Koshy & K.P.Balachandran, JJ.

M.A.C.A.No.69 of 2003

JUDGMENT

13th June, 2007